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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 MARSHALL COLLINS, III, No. C 07-0668 WHA (PR)  
11 Plaintiff, DISMISSAL WITH LEAVE TO  
12 v. AMEND  
13 CALIFORNIA DEPARTMENT OF  
14 MENTAL HEALTH,  
15 Defendant.  
16 \_\_\_\_\_/

17 Plaintiff, a patient at the Napa State Hospital, has filed a pro se civil rights complaint  
18 under 42 U.S.C. § 1983. He has paid the filing fee.

19 **DISCUSSION**

20 Plaintiff contends that his right of access to the courts is being violated by a new policy  
21 at the mental hospital where he is housed. The policy provides that unless a patient who is out  
22 to court returns to the institution within forty-eight hours, he must start his treatment over again  
23 and be housed in a different area than the one which he has achieved. Plaintiff also contends  
24 that this constitutes an Eighth Amendment violation, in that it is deliberate indifference to a  
25 serious medical need.

26 Plaintiff lists only the California department of Mental Health as a defendant. Because  
27 the Department is a state agency, it cannot be sued in federal court, *see Simmons v. Sacramento*  
28 *County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003), and plaintiff does not name

1 anyone who he contends is responsible for the allegedly-unconstitutional policy. The complaint  
2 therefore must be dismissed with leave to amend.

3 In amending, plaintiff should bear in mind that [w]hile a complaint ... does not need  
4 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his  
5 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of  
6 the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a  
7 right to relief above the speculative level." *See Bell Atlantic Corp. v. Twombly*, 127 S. Ct.  
8 1955, 1964-65 (2007). Plaintiff must "proffer enough facts to state a claim for relief that is  
9 plausible on its face." *Id.* at 1986-87.

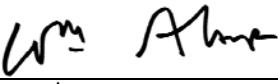
## 10 CONCLUSION

11 1. The complaint is **DISMISSED** with leave to amend, as indicated above, within thirty  
12 days from the date of this order. The amended complaint must include the caption and civil  
13 case number used in this order and the words AMENDED COMPLAINT on the first page.  
14 Because an amended complaint completely replaces the original complaint, plaintiff must  
15 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262  
16 (9th Cir. 1992). He may not incorporate material from the original complaint by reference.  
17 Failure to amend within the designated time will result in the dismissal of these claims. It  
18 would be helpful if plaintiff would explain whether he is confined at the hospital as the result of  
19 criminal proceedings.

20 2. It is the plaintiff's responsibility to prosecute this case. Papers intended to be filed in  
21 this case should be addressed to the clerk and not to the undersigned. Petitioner also must  
22 comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal  
23 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

## 24 IT IS SO ORDERED.

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26 Dated: October 9, 2007.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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